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E.O. 12958: DECL: 03/05/2013

TAGS: OFDP UN

SUBJECT: INDIA AND MONGOLIA WANT NY PROPERTY TAX ISSUE
REFERRED TO THE INTERNATIONAL COURT OF JUSTICE

Classified By: Ambassador Alejandro D. Wolff for reasons 1.4(b and d).

¶1. Cypriot Ambassador Mavroyiannis, Chairman of the UN Committee on Relations with the Host Country, has informed USUN that the Indian and Mongolian Ambassadors have asked him to convene an emergency meeting of the Committee with a view toward a General Assembly request to the International Court of Justice (ICJ) for an advisory opinion that New York's attempt to tax diplomatic staff residences and other foreign government owned property is a violation of diplomatic immunity. It is expected that India and Mongolia will take the position that a tax lien on such property makes it impossible to sell and thus de facto violates a country's immunity from execution of the lien. The 19-member committee cannot refer an issue directly to the ICJ, but it will almost certainly approve a recommendation to the UN General Assembly that it consider a UNGA resolution requesting the ICJ to provide an opinion on this issue. It is the Chairman's intention to convene the meeting during the week of March 17. USUN understands that the Department has not yet developed a position as to whether the current New York Real Property Tax Law is consistent with international practice or USG diplomatic interests in property overseas and may not be able to do so before March 17. If we are not able to articulate a clear host country position on the issue, our ability to influence the parties will remain minimal. (And if our position is to support the City's interpretation of the tax law, it would likely lead to an ICJ referral anyway.)

¶2. USUN understands that some Department offices would prefer that a Host Country Committee meeting not take place and India's and Mongolia's concerns not be referred to the ICJ. It is possible that the committee's Chairman would be willing to defer a meeting, but highly unlikely that he would agree to do so without the concurrence of the Indians and Mongolians. In order to get that concurrence, either he or USUN would have to signal to India and Mongolia that the host country is sympathetic to their views and is formulating a strategy to deal with the issue. However, even if a meeting of the Committee were postponed, that would not prevent states from bringing the matter directly before the General Assembly Plenary.

KHALILZAD